Quik Park Garage Corporation *and* Garage Employees Union, Local 272, International Brotherhood of Teamsters, AFL–CIO. Case 2–CA–25749

September 30, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On January 28, 1994, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the deicision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Quik Park Garage Corporation, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In its exceptions, the Respondent contends, inter alia, that even if it violated Sec. 8(a)(5) and (1) of the Act by unilaterally reducing wages and benefits in April 1992, the Union subsequently refused to bargain with the Respondent and therefore the judge's make-whole remedy should be modified to find that the backpay period ends when the Union refused to bargain. We express no view on the merits of the Respondent's contention and instead leave this matter for resolution at the compliance stage of this proceeding.

Terry A. Morgan, Esq., for the General Counsel.
Hugh M. Heller, Esq. (Fischbein, Badillo, Wagner & Itzler), of New York, New York, for the Respondent.
Bruce J. Cooper, Esq. (Dublirer, Haydon, Straci & Victor), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in New York, New York, on June 14, 18, 22, and 23, 1993. Upon a charge filed on May 19, 1992, an amended complaint was issued on May 6, 1993, alleging that Quik Park Garage Corporation (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by failing to bargain in good faith with Garage Employees Union, Local 272, International Brotherhood of Teamsters, AFL–CIO (the Union) and by unilaterally implementing wage and benefit reductions without prior notice to the Union. Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by General Counsel and by the Respondent on August 12, 1993.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation, with offices and places of business in New York City, has been engaged in the ownership and management of public parking garages. Annually Respondent derives gross revenues in excess of $500,000 and purchases and receives at its facilities goods valued in excess of $5000 directly from suppliers located outside the State of New York. It has been admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

1. Background

The Union and Respondent were parties to a collective-bargaining agreement which was effective by its terms from July 1, 1989, to February 5, 1992. On November 27, 1991, Eugene Bennett, secretary-treasurer of the Union, sent a letter to Respondent, addressed to the then president, Anthony Policella, which stated in pertinent part:

> This is to inform you that the collective-bargaining agreement now in force between your company and the Garage Employees Local Union No. 272, I.B. of T., will expire on midnight, February 5, 1992. Pursuant to Article XXX, Paragraph 2 of the agreement, the Executive Board of Local No. 272 desires to meet with you to exchange demands for the purpose of negotiating a new collective-bargaining agreement. Please call our office for a mutually agreed meeting date.

On December 4, 1991, Policella wrote the following reply to Bennett.

> I have received your letter dated November 27, 1991. Quik Park agrees that the collective-bargaining agreement will terminate on February 5, 1992, and the company is ready to meet and discuss the terms and conditions for a new agreement. Of course, as you know, Quik Park is not a member of the Metropolitan Garage Owners Association, Inc., and our negotiations will be conducted directly between Quik Park and your

local. Please call me so that we could schedule a meeting.

On February 7, 1992,[1] Daniel J. Sullivan, the then assistant business manager of the Union, faxed a proposed extension agreement to Respondent. The agreement would have extended the term of the collective-bargaining agreement through March 12. However, Respondent did not sign the proposed extension agreement. By letter dated March 11, Respondent's counsel, Edward S. Feldman, advised counsel for the Union ''as long as the association was negotiating, in essence, Quik Park was also negotiating. Since you have advised that the association is now at an impasse, then Quik Park is now at the same impasse.''

2. Request for negotiations

Andrew Meyer succeeded Policella as president of Respondent. Sullivan testified that in January he telephoned Meyer to schedule dates for negotiations. Sullivan testified that Meyer replied he would have to check with Feldman, Respondent's attorney. Sullivan testified that Meyer never got back to him with dates. Jacob I. Sopher, who testified that he was the owner of Respondent, stated that he spoke with Sullivan in late 1991 or early 1992 concerning the expiring contract. Sopher told Sullivan that Respondent wanted to piggyback whatever deal the Union made with the Metropolitan Garage Owners Association (Association). Sopher testified that Sullivan stated this would be a ''wise'' way to proceed.

Steven Chiappa, vice president of operations of Respondent, began his employment with Respondent on July 6. Chiappa testified that he met Sullivan on July 8, at which time Sullivan told him that ''he could not negotiate with me while he was negotiating with the Association.'' James Mullen was appointed vice president of the Union in July 1992. He testified that beginning in April 1993 the Union was proceeding with a ''new route'' to get employers to present proposals to the Union. He stated that the ''old route'' was to ''deal with the MGOA and then get them contracts, automatically to whatever independets there are.'' Feldman testified that Sullivan told him ''at least once'' that in terms of negotiations ''when we finish with the Association then you'll have your contract.'' The only date that Feldman specifically recalled this statement having been made was November 25, 1992.

3. Discussion and conclusions

Respondent contends that it was ready and willing to negotiate at all times but that the Union refused to bargain with it until an agreement was reached with the Association. While that may have been true sometime subsequent to the unilateral reduction of wages and benefits, I find that the record does not show that the Union took that position prior to Respondent's unilateral action. On November 27, 1991, the Union informed Respondent that the collective-bargaining agreement was due to expire and asked Respondent's president to ''call our office for a mutually agreed meeting date.'' By letter dated December 4, 1991, Respondent agreed to pursue negotiations and Respondent's president in turn asked the secretary-treasurer of the Union to ''call me so that we could schedule a meeting.'' I credit Sullivan's testimony that during January 1992 he called Andrew Meyer, the new president of Quik Park, asking him for a date when negotiations could take place. Meyer told Sullivan that he would have to discuss the matter with his attorney and would get back to Sullivan. Meyer never responded to Sullivan. On February 7 Sullivan transmitted a proposed extension agreement to Respondent. Respondent did not sign the extension. Instead, on March 11 Respondent declared that it was at an impasse with the Union and soon thereafter Respondent unilaterally reduced wages and benefits without notification or bargaining with the Union.

While I credit Chiappa's statement that Sullivan told him that the Union would not negotiate until it had finished with the Association, that statement was made on July 8. Similarly, while Mullen stated that the old policy of the Union had been to bargain first with the Association, Mullen was appointed vice president of the Union in July 1992. The record does not show that Mullen was aware of the Union's policy in February or March 1992. In addition, while Feldman also testified that Sullivan said that the Union would not negotiate with Respondent until after negotiations were finished with the Association, the only date that Feldman specifically remembered that statement having been made was November 25.

Feldman's letter dated March 11 stated that since the Association was at an impasse, ''Quik Park is now at the same impasse.'' Where an employer and union have engaged in good-faith negotiations and have exhausted the possibility of reaching an agreement, an impasse occurs. Once an impasse exists an employer is then free to make changes in the working conditions, which are consistent with its offers rejected by the Union. See *NLRB v. Katz*, 369 U.S. 736 (1962); *Winn-Dixie Stores*, 243 NLRB 972 (1979). Since Respondent was not a member of the Association, Respondent could not be at an impasse merely because the Association declared an impasse. I find, therefore, that as of April, when Respondent made its unilateral changes, an impasse did not exist between Respondent and the Union. In addition, as of that time the record does not show that the Union advised Respondent that it would not negotiate with Respondent until after it negotiated with the Association. Cf. *Louisiana Dock Co.*, 293 NLRB 233, 235–236 (1989), enf. denied on other grounds 909 F.2d 281 (7th Cir. 1990). Accordingly, I find that Respondent, by unilaterally reducing wages and benefits without prior notice to the Union, or affording the Union an opportunity to bargain over such changes, violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to bargain with the Union, by declaring an impasse and by unilaterally reducing wages and benefits without prior notice to the Union or affording the Union an opportunity to bargain over such changes, Respondent has engaged in unfair labor practices within the meaning of Section 8(1) and (5) of the Act.

[1] All dates refer to 1992 unless otherwise specified.

4. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the act.

Having found that Respondent violated the Act by unilaterally changing certain terms and conditions of employment without notice to and bargaining with the Union, I shall order Respondent to restore the status quo by rescinding, on request from the Union, those unilateral changes and make all affected unit employees whole for losses they incurred by virtue of its unilateral changes, in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Quik Park Garage Corporation, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Declaring an impasse when no impasse exists and unilaterally changing the terms and conditions of employment without prior notice to or bargaining with the Union as the exclusive representative of the employees in the below-described bargaining unit.

(b) Refusing to bargain with Garage Employees Union, Local 272, International Brotherhood of Teamsters, AFL–CIO in the following appropriate unit:

> All working managers or working foremen, washers, floormen, transporters, cashiers and all other persons now or hereafter performing one or more of the functions of the said included job classifications; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit with respect to rates of pay, hours and other terms of employment and if understandings are reached, embody such understandings in signed agreements.

(b) On request of the Union, rescind the unilateral changes and make whole affected employees for losses incurred by virtue of the unilateral changes, with interest, as prescribed in the remedy section of the decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amounts owing under the terms of this Order.

(d) Post at its facility in New York, New York, copies of the attached notice marked ''Appendix.''[4] Copies of the notice on forms provided by the Regional Director for Region 2, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] Under *New Horizons*, interest is computed at the ''short-term'' Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT declare an impasse when an impasse does not exist and WE WILL NOT unilaterally change the terms and conditions of employment for bargaining unit employees without prior notice to or bargaining with the Union as the exclusive representative of the employees in the below-described unit.

WE WILL NOT refuse to bargain with Garage Employees Union, Local 272, International Brotherhood of Teamsters, AFL–CIO as the exclusive representative of the employees in the following appropriate unit:

> All working managers or working foremen, washers, floormen, transporters, cashiers, and all other persons now or hereafter performing one or more of the functions of the said included job classifications; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, with respect to rates of pay, hours and other terms of employment and if understandings are reached, embody such understandings in signed agreements.

WE WILL, on request of the Union, rescind the unilateral changes and make affected employees whole for losses incurred by virtue of the unilateral changes, with interest.

QUIK PARK GARAGE CORPORATION